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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,006	03/15/2001	Colin l'Anson	1509-148	4592

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EXAMINER

ESCALANTE, OVIDIO

ART UNIT	PAPER NUMBER
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2645

DATE MAILED: 11/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/808,006

Applicant(s)

I'ANSON, COLIN

Examiner

Ovidio Escalante

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement submitted on March 15, 2001 and July 29, 2002 was received. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly the information disclosure statement is being considered by the examiner.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-6,8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brilla et al. US Patent 6,389,276 in view of Souissi et al. US Patent 6,556,817.

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Regarding claim 1, Brilla teaches a method of transferring audio messages to a mobile entity across a mobile radio infrastructure, (abstract), the method comprising the steps of:

(a) transferring to a service system a voice call made towards the mobile entity but which cannot be completed, (col. 4, lines 28-35); and

(b) recording the call at the service system and forming it into a data message addressed to the mobile entity, (col. 4, lines 33-39).

(c) passing the data message to the mobile entity over a data-capable bearer service of the mobile radio infrastructure, (col. 4, lines 39-45; col. 6, lines 3-15); and

(d) storing the data message in the mobile entity for subsequent access by a user, (col. 4, lines 36-45; col. 6, lines 3-15).

Brilla does not specifically teach at a time determined with a view to avoiding peak traffic loadings of the mobile radio infrastructure. However, Brilla suggests using a data network so that peak traffic can be avoided therefore one of ordinary skill in the art would determined peak traffic so that the less traffic path can be chosen.

Nonetheless, Souissi teaches that it was well known in the art to receive a voice call or voice message and at a time determined with a view to avoiding peak traffic loadings of the mobile radio infrastructure, (abstract), passing the message to a mobile entity over a data-capable bearer service of the mobile radio infrastructure, (col. 3, line 34-col. 4, line 9; col. 5, line 66-col. 6, line 17)).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Brilla by avoiding peak traffic loadings as taught by Souissi so that the cost of the transmission rate can be lowered.

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Regarding claim 2, Brilla in view of Souissi teaches wherein the data message is passed to the mobile entity at a time corresponding to an off-peak charging rate through the mobile radio infrastructure according to a predetermined tariff schedule held or accessed by the service system, (col. 5, lines 25-48; col. 7, lines 9-25; col. 12, lines 54-60, Souissi). As shown above and hereinafter, it would have been obvious to avoid peak traffic loadings as taught by Souissi so that the cost of the transmission rate can be lowered.

Regarding claim 3, Brilla in view of Souissi teaches wherein the data message is passed to the mobile entity at a time corresponding to an off-peak charging rate through the mobile radio infrastructure according to a charging schedule dynamically changed to take account of the actual loading of the mobile radio infrastructure, this schedule being accessed at least periodically by the service system, (col. 7, lines 9-25, Souissi).

Regarding claim 4, Brilla in view of Souissi teaches wherein the data message is passed to the mobile entity at a time preset according to a schedule agreed with the operator of the mobile radio infrastructure for avoiding peak load periods on the infrastructure, (col. 6, lines 66-col. 7, lines 25; col. 12, lines 54-60, Souissi).

Regarding claim 5, Brilla in view of Souissi teaches wherein the data message is passed to the mobile entity at a time negotiated with an arbitration system in communication with the mobile radio infrastructure, to satisfy transfer parameters specified by the service system for transfer of the data message through the mobile radio infrastructure, (col. 5, lines 25-48; col. 8, lines 40-63; col. 16, lines 4-14, Souissi).

Regarding claim 6, Brilla in view of Souissi teaches wherein the data message is passed to the mobile entity in response to the mobile radio infrastructure indicating to the service system

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that the mobile entity is available to receive the data message, (abstract; col. 5, lines 25-48; col. 12, lines 54-60, Souissi).

Regarding claim 8, Brilla teaches wherein transfer of the voice call to the service system results in the service system being provided with a called party ID identifying the mobile device, the service system using this ID to look up a destination address for the data message, (col. 10, lines 50-62).

Regarding claim 9, Brilla teaches wherein the data message is an e-mail message, (col. 6, lines 3-15).

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brilla in view of Souissa and further in view of Hickman US Patent Pub. 2001/0033564.

Regarding claim 7, while Brilla in view of Souissi teaches of sending the voice call as a data message to the mobile entity, Brilla and Souissa do not specifically teach of converting the voice call to text.

Hickman teaches wherein voice call is converted to text at the service system for incorporation into the data message, (paragraph 75). The system of Hickman teaches the voice message can be converted to text and incorporated into an e-mail message.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Brilla and Souissi by converting the voice call to text so that the called party can read the contents of the voice call.

Conclusion

7. Any response to this action should be mailed to:

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

or faxed to:

(703) 872-9306, (for formal communications intended for entry)

Or:

(703) 872-9314, (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal
Drive, Arlington, VA, Sixth Floor (Receptionist).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ovidio Escalante whose telephone number is (703) 308-6262. The examiner can normally be reached on Monday to Friday from 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang, can be reached on (703) 305-4895. The fax phone number for this Group is (703) 872-9306.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [fan.tsang@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly

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signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

Ovidio Escalante
Examiner
Group 2645
November 10, 2003

FAN TSANG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

A handwritten signature in black ink, appearing to read 'Fan Tsang', is written over the printed name and title.